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Agenda item 80
Diplomatic protection

Diplomatic protection

Comments and information received from Governments

Report of the Secretary-General

Addendum

I. Introduction

As at 5 October 2010, the Secretary-General had also received written comments from the Netherlands (dated 30 September 2010).

II. Comments on any future action regarding the articles on diplomatic protection

Netherlands

[Original: English]
[30 September 2010]

The Netherlands believes that, at this stage, it is not advisable to adopt a draft convention based on the current draft articles on diplomatic protection. The Netherlands would have wished that the draft articles had followed a somewhat more progressive approach with regard to this topic. Nevertheless, it must be mentioned that articles 8 and 19 of the current draft do follow a progressive approach. The Netherlands fears that a potential convention on diplomatic protection would be deprived of its few progressive elements, in particular articles 8 and 19, by the time it would be ratified.

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III. Comments on the articles on diplomatic protection

Netherlands

[Original: English]
[30 September 2010]

Article 8 provides for the possibility of diplomatic protection by a State in respect of stateless persons and refugees lawfully and habitually resident in that State. This article can be considered as an exercise in the progressive development of law, as it departs from the traditional rule that only nationals may benefit from the exercise of diplomatic protection. The Netherlands applauds this article because of its importance in respect of refugees, who, without this article, would in most cases be left unprotected.

The Netherlands appreciates article 19 on recommended practice. While it is not a common feature of international legal instruments to make use of recommendatory language, such language is not unknown. Article 19 would, in the view of the Netherlands, indeed support the position of the injured individual and would be congruent with the obligation to protect nationals when they are subjected to significant human rights violations. The Netherlands therefore subscribes to this "best-practices" approach.